



DIRECTOR OF REGULATION

VIA FEDERAL EXPRESS

July 29, 1994

Donna R. Searcy, Secretary
Federal Communications Commission
1919M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED
AUG 1 1994
FCC MAIL ROOM

Re: Comments of U.S. Long Distance, Inc. in CC Docket No. 92-77

Dear Ms. Searcy:

Enclosed herein please find an original and ten (10) copies of the Comments of U.S. Long Distance, Inc. ("USLD") in the above referenced proceeding, submitted herewith for filing in accordance with the amended schedule set forth in the Commission's Further Notice of Proposed Rulemaking, released June 6, 1994.

Please date stamp the enclosed copy of this letter for verification of your receipt and return to the undersigned in the postage paid envelope provided. Please contact the undersigned with any relative questions or requests. Your courtesies are greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Melley, Jr.", with a stylized flourish at the end.

Kenneth F. Melley, Jr.
Director of Regulatory Affairs

copy to: Attached Service List

No. of Copies rec'd
List ABCDE

0410

Corporate Offices

9311 San Pedro, Suite 300, San Antonio, Texas 78216
(210) 525-9009 Fax (210) 525-0389

DOCKET F-100-94-00000

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of

Billed Party Preference
for "0+" InterLATA calls

)
)
)
)

RECEIVED
AUG 1 1994
FCC MAIL ROOM
CC Docket No. 92-17

**COMMENTS OF U.S. LONG DISTANCE, INC.
REGARDING THE COMMISSION'S FURTHER NOTICE OF PROPOSED
RULEMAKING**

Kenneth F. Melley, Jr.
Director of Regulatory Affairs
U.S. Long Distance, Inc.
9311 San Pedro, Suite 300
San Antonio, Texas 78216
(210) 525-9009

August 1, 1994

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Summary | iii |
| I. INTRODUCTION AND STATEMENT OF INTEREST | 1 |
| II. ERRORS IN THE FNPRM COST ANALYSIS | 2 |
| 1. Dial Around Revenue Considered Incorrectly | 2 |
| 2. Failure to Consider OSP Rate Trends | 4 |
| 3. Inaccurate Consideration of OSP vs. LEC Operator Costs | 5 |
| 4. Failure to Address LEC 25% Load Factor | 6 |
| II. ERRORS IN THE FNPRM BENEFIT ANALYSIS | 6 |
| IV. ERRORS IN THE FNPRM MARKET ANALYSIS | 6 |
| 1. Failure to Recognize Dialing Pattern Trends | 6 |
| 2. Inaccurate Conclusion Regarding Consumers' Frustration Concerning Operator Services | 7 |
| 3. Inaccurate Conclusion Regarding Consumers' Perception of Access Code Calling | 7 |
| 4. Inaccurate Conclusion Regarding OSP Complaints | 8 |
| 5. Inadequate Reference to the Effect BPP Will Have on the Proliferation of Pay Telephones | 8 |
| 6. Inadequate Support for Consumer Acceptance of Double Operator Intervention Under BPP | 9 |
| 7. Improper Quantification of the Cost per Call of BPP | 9 |
| V. OTHER ERRORS AND OVERSIGHTS IN THE FNPRM | 10 |
| 1. Public Investment into the Operator Services Industry | 10 |
| 2. Impact of Creating a Monopoly Service in a Deregulated Market | 13 |
| VI. ALTERNATIVES | 15 |
| VII. CONCLUSION | 18 |

Summary

In its Further Notice of Proposed Rulemaking in CC Docket No. 92-77, the Commission tentatively concludes that a nationwide system of Billed Party Preference ("BPP") will "facilitate access" to the network by eliminating the need to dial an access code for those end users who express a preference in the carrier of their "0+" calls, "stimulate competition" in the operator services industry, and result in the ultimate objective of "lower prices" to the consumer.

In formulating their argument for the impending consumer demand to "facilitate access," however, the Commission fails to demonstrate by fact or logical conclusion the existence of such demand. On the contrary, the Commission indicates that consumers to a growing degree are embracing "dial around" calling as an alternative in those instances an alternate carrier is truly preferred.

The Commission's argument concerning the stimulation of competition fails to consider historical price trends in the OSP industry. Today, the absence of commission payments on an operator assisted call by the largest carriers, those who can be expected to survive in the operator services industry after the implementation of BPP, is not reflected in the form of lower rates compared to those same carriers' rates upon which commissions are currently paid. Eliminating such commission payments in the future, therefore, while simultaneously introducing a processing fee for a BPP call, cannot logically be expected to result in lower end user rates, nor can it be expected stimulate competition in the operator service industry.

The Commission's calculation of the costs to the end user of the implementation of BPP compared to the charges currently assessed on all operator assisted calls contains many fundamental errors and fails to consider certain significant facts. For example, the Commission makes an invalid assumption that the costs associated with LEC

provisioning of adequate operator capacity to handle the processing of every "0+" call would be offset by the savings associated with the abandonment of "similar" IXC operator capacity. This conclusion is reached without properly considering IXC sunk costs or the difference in cost base between a regulated LEC and a competitive IXC. The Commission furthermore does not contemplate the impact its decision to grant LECs monopoly control over 0+ services will have in light of legislative and judicial initiatives to discourage and abandon that form of market regulation.

Finally, the Commission has available alternative means to affect lower prices in the operator services industry at virtually no cost by simply establishing proceedings that quantify rate levels which are reasonable to both the consumer and the operator service industry, and imposing thereafter mechanisms to ensure such rates are employed by all providers of operator services.

In sum, the proposal to implement a system of billed party preference is based upon erroneous and incomplete analysis of consumer demand and price relativity. Furthermore, the Commission has at its disposal the means to affect the underlying goal propounded in the FNPRM. Upon reviewing these facts, USLD believes the Commission must deny outright the massively expensive proposal to implement BPP, and may instead direct its staff to pursue more astute means of achieving their objective.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of

Billed Party Preference
for "0+" InterLATA calls

)
)
)
)

CC Docket No. 92-77

**COMMENTS OF U.S. LONG DISTANCE, INC.
REGARDING THE COMMISSION'S FURTHER NOTICE OF PROPOSED
RULEMAKING**

U.S. Long Distance, Inc. ("USLD") hereby submits its comments on the proposal for implementation of a Billed Party Preference ("BPP") system as contemplated in the Further Notice of Proposed Rulemaking ("FNPRM") released June 6, 1994 by the Commission.¹ USLD believes, upon review of the cost/benefit analysis set forth within the FNPRM, that significant errors are made in evaluating the costs, benefits, market analysis, and general merits of a BPP system which, if properly considered, at the very least cast serious doubt upon the recommended course of the Commission. The Commission has also failed to consider the generally anticipated state of the industry at the projected time of implementation of BPP, which has a significant impact upon the merits of this proposal relative to consumer benefits. Finally, USLD proposes that the Commission consider a relatively "cost-free" alternative for meeting the underlying objectives of the BPP proposal; reduced end user rates.

¹ Billed Party Preference for "0+" InterLATA calls, CC Docket No. 92-77, (rel. June 6, 1994), hereinafter referred to as "FNPRM."

STATEMENT OF INTEREST

USLD is a San Antonio, Texas based provider of direct dial and operator assisted telecommunications services. USLD direct dial services could be affected by the implementation of a BPP system to the extent that its ability to originate its presubscribed customers' 0+ calls throughout the United States compared to certain larger, facilities based carriers could be perceived by its customers or potential customers as impaired. USLD operator services to presubscribed aggregator locations would be rendered useless under the contemplated system of BPP, eliminating the entire OSP industry as it exists today. For these reasons, USLD has a vital interest in the outcome of this proceeding

I. ERRORS IN THE FNPRM COST ANALYSIS

The Commission's evaluation of the costs associated with the implementation of BPP are wrought with errors and oversights.

1. First, the Commission includes in its comparison of charges between "third tier" ² and "non-third tier" ³ carriers the revenues applicable to dial around traffic, which according to TOCSIA Table 4 amounted to over 21% of all operator service revenues in the study period, and nearly one third of the total billed revenue attributable to the non-third tier carriers. ⁴ These revenues are included in the calculation of the average rate per minute for non-third tier OSPs (\$0.34), which is then compared to the Commission calculated third tier OSP average rate per minute (\$0.53). The Commission uses the difference in rates per minute, (\$0.19), to calculate an amount to be "saved" by consumers in 1997, once BPP is implemented.

² The Commission refers to data compiled by its Industry Analysis Division in a report entitled "Operator Services - 1991" as it applies to six operator service provider statistics at that time. Those companies are Americall, Amnex, Com Systems, ITT, Telecom *USA and United ("third tier operator service providers.")

³ Id., AT&T, MCI and Sprint ("non-third tier operator service providers.")

⁴ TOCSIA Table 4 estimates dial around revenues to equal \$1.9 billion, where all operator service revenues equal \$9.0 billion ($1.9 / 9 = 21.1\%$), and operator service revenue attributable to non-third tier OSPs at \$7 billion ($1.9 / 7 = 27.1\%$.)

Including dial around revenues in this calculation implies that dial around calls after the implementation of BPP will discontinue; all dial around calls will revert to 0+ calls. However, by the Commission's own admission, dial around calling is gaining consumer acceptance, and, according to the Commission, will account for 50% of all operator assisted calls by 1997. If the Commission anticipates this growth in the use of dial around, yet contemplates imposing a new BPP processing charge upon all calls which use 0+ dialing under the BPP regime, there is no rationale to support the claim that 50% of all calls will revert to a more expensive means of placing operator assisted calls. In fact, it is logical to assume that IXCs will encourage end users to utilize dial around access as the most cost effective means of completing operator assisted calls; i.e., by avoiding the imposition of LEC imposed BPP processing fees.

Backing out the revenues and minutes attributable to dial around calling in the Commission's comparison will drive up the average rate of \$0.34 per minute significantly, since the revenues associated with these access code calls do not include any contribution to the total "commission & surcharge" which is reported in TOCSIA Table 4 applicable to non-third tier OSPs and included in the amount "to be saved" as calculated in the FNPRM. This is particularly true in light of the Commission's estimation that dial around calls will continue to rapidly replace third tier OSP operator calls over the course of the next three years. It is therefore improper to include these values in making an accurate assessment of the comparative costs of implementing BPP.

What is, however, even more questionable is the Commission's distortion of the prospective costs of dial around calls relative to 0+ calls by proclaiming their intention to double the rate of dial around compensation, purported to be for the benefit of the aggregators.⁵ The Commission then factors in this projected increase in dial around expense as a means of justifying the cost of implementing BPP in a bizarre twist of

⁵ FNPRM, Appendix B

economic rationale. The Commission proposes, in other words, to impose costs on non-BPP traffic in the future, while simultaneously arguing that such increasing rates are another reason why BPP would be a more economical alternative relative to the status quo.

2. The Commission moves on to draw erroneous conclusions from its cost estimations in the FNPRM. Specifically, having calculated a rate per minute differential between third tier OSPs and non-third tier OSPs of \$0.19 per minute based upon information gathered in 1991, the Commission then applies this differential to 1997 projected operator traffic patterns without making any allowances for increases in non-third tier OSP rates, nor decreases in third tier OSP rates that can be expected in the interim.

Operator service charges for collect calls charged by the dominant carrier have increased 20% since the data for the Commission's report was accumulated.⁶ MTS rates for "non-third tier" OSPs during this same period for operator assisted interstate calls have also increased. The Commission provides no rationale to explain why this trend will not continue between today and 1997. Furthermore, Commission's study inherently assumes that 3rd tier OSP rates will remain unchanged into the future as well, even though in its 1992 Report to Congress on TOCSIA the Commission stated, " ... data indicates that, overall, the average sample charge is trending downward."⁷ Despite the readily available information pertaining to the increasing trend in "non-third tier" OSP operator service rates, and despite the Commission's own conclusion in its Report to Congress, that third tier OSP rates are declining, the Commission fails to account for the fact that their own evidence indicates that operator charges for third tier and non-third tier carriers are migrating closer together.

⁶ AT&T F.C.C. Tariff No. 1, collect charge in 1991 was \$1.75, and is currently \$2.10.

⁷ Final Report of the Federal Communications Commission pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, November 13, 1992, (hereinafter referred to as "FCC Final Report") at page 22.

3. In its analysis of the projected costs of BPP, the Commission makes the inaccurate assertion that an increase in LEC operator costs for the implementation of BPP should not be factored into the expense attributable to BPP due to the comparable decrease in operator expense that can be expected for OSPs.⁸ This quixotic assumption fails to take the following basic factors into consideration:

- * The expense associated with stranded IXC operator equipment.
- *The fact that every call processed by the LEC operator will still require processing by the IXC operator under BPP for validation and billing methodology determination, therefore IXC operator capacity cannot be removed linearly with the implementation of LEC BPP functionality.
- * The fact that IXC and LEC operator wages, salaries and benefits cannot be presumed to be similar.
- *The fact that a non-recurring (or a one-time) charge for AABS cannot be "offset." Once a non-recurring cost is incurred by an IXC, it remains incurred regardless of whether a LEC incurs a similar non-recurring charge for the same purpose.

The Commission fails to attribute \$90 million of a total of \$120 million in operator costs per year in its calculation of the costs of BPP without considering the foregoing factors. This is a representative indication that the analysis or investigation conducted by the Commission is at the very least inadequate. Considering the magnitude of the investment required to implement a BPP system, such oversight casts serious doubt over whether a sufficient effort has been made by those parties responsible for recommending the implementation of BPP.

⁸ FNPRM at 25.

4. Furthermore, the Commission does not address the LEC 25% load factor, which certain LECs indicate are instrumental to their support for the proposal.² LEC cost loading is necessary to prevent cross subsidization of the BPP system by local rate payers, yet the Commission does not even offer any analysis, justification nor discussion on the matter.

II. ERRORS IN THE FNPRM BENEFIT ANALYSIS

The Commission attempts to justify the benefits of BPP without considering certain obvious facts. For example, the Commission's estimate of \$340 million in "savings" from reduced commissions fails to recognize that \$228 million of the \$340 million is attributable to AT&T, MCI and Sprint. Since the big three charge the same rates currently for 0+ calls regardless of whether or not they pay commissions a call,¹⁰ it is not defensible and contrary to the Commission's own assertion to assume that they will pass on any savings in commission expenses to their end users under BPP. Thus, the purported "net savings" in commissions according to the Commission's study could actually be projected at only \$112 million per year, which far exceeds the Commission's estimate of the cost of BPP.¹¹

III. ERRORS IN THE FNPRM MARKET ANALYSIS

The Commission, in estimating the market demand for BPP, makes several serious errors and unsubstantiated claims.

1. The Commission, by its own estimate in the Further Notice, expects 3rd tier OSPs to lose market share at a rate of 6% per year, and dial around calls to represent half of all operator assisted calls by 1997.¹² This clearly indicates the Commission's

² Id. at 27. Footnotes reference indicates that Ameritech, GTE, Pacific Bell and Southwestern Bell have specifically indicated their intent to seek recovery of these costs.

¹⁰ Id. at 58, see footnote 88, "MCI and Sprint currently charge almost the same rates to customers who use 1-800 access codes from those phones, even though the carriers must pay commissions of approximately \$.35 per call to receive the former calls and nothing to receive the latter."

¹¹ Id. at 27, "... and thus the total LEC cost of BPP modifications, net the offset for OSP operator cost savings, would be approximately \$380 million/yr."

¹² Id. at Appendix B.

awareness that end users are migrating away from 0+ calling, contradicting their assertion in the same document that consumers demand BPP because of burdensome dialing requirements. By the time it is implemented, according to FCC own estimates, BPP will for all practical purposes be obsolete.

2. The Commission attempts to claim that consumers find access code calling too burdensome, therefore a BPP system is demanded by the public. ¹³ FNPRM refers as evidence of this fact to CC Docket No. 92-77, 7 FCC Rcd at 3030, which states only that consumers are " ... confused by the division of responsibilities between the local and long distance telephone companies ... [and] frustrated and confused by call blocking." Since this is the Commission's only cited reference to consumer demand for BPP, perhaps these facts should be more closely scrutinized. USLD believes the majority of telecommunications consumers are currently aware of the division of responsibilities between LECs and IXC's, and that "call blocking" is no longer the source of frustration, since the enactment of TOCSIA and the requirement for all aggregators to incur expenses to ensure availability to all IXC's through 1-800, 950 and 10XXX access. USLD contends, therefore, that the underlying premise for FCC's support of a BPP proposal, consumer demand, is both unsubstantiated and imprecise.

3. The Commission represents that access code calling is becoming more and more accepted, and anticipates that 50% of all operator calls in 1997 will be operator calls. ¹⁴ The Commission offers no rational explanation or discussion, however, as to how it has concluded that, given this trend towards end user access code dialing acceptability, consumers would actually prefer to a greater extent being assessed an additional charge, which has not even been estimated by the Commission, in order to avoid making such access code calls they are readily accepting, as proven by the Commission's own findings.

¹³ Id. at 4.

¹⁴ Id. at Appendix B.

The Commission fails to cite any end user complaints in the FNPRM nor at any time in previously in this proceeding, regarding the burden of dialing access codes. USLD, having provided operator services since 1988, has never received any such complaint. The Commission cites no Consumer Advocate comments nor survey indicating public opinion nor any quantitative analysis as to whether consumers consider access code calling burdensome. Since the apparent consumer demand for easier dialing plans is the cornerstone of the Commission's justification for proposing BPP, USLD would assume that the Commission could present some evidentiary documentation supporting their conclusion. Deciding what is good for the consumer without consulting the consumer is beyond the statutory obligations of the Commission in the opinion of USLD.

4. The Commission implies that an increase in complaints against OSPs in general are indicative of the public's desire for BPP. This increase, 60% over three years since April 1990 as noted by the Commission, ¹⁵ fails to take into account the obvious fact that, prior to November 1990, the FCC's address for filing complaints was not made available to the end user. USLD's experience has been that end user complaints have remained at a consistent, base line level since 1991.

5. The Commission states, " ... [W]e do not find convincing evidence that the loss of premise owner's Commission's under BPP would adversely affect the availability of public payphone service." ¹⁶ Specifically, US West is reported to have stated that the " ... significant increase in commission available to payphone providers and premise owners has not had a meaningful effect on the number of payphones in service." ¹⁷ This conclusion is based upon an ex-parte filing by US West. The US West service area is not comparable as a business market to that of NYNEX or Bell Atlantic, Southwestern Bell or Pacific Bell. Perhaps pay telephone proliferation has occurred to a greater extent in areas with greater

¹⁵ Id. at 16.

¹⁶ Id. at 33.

¹⁷ Id. footnote 57.

population density. In any event, it is irresponsible to rely on this source as the conclusive evidence that commission payments have no effect on pay telephone proliferation, particularly when scores of other commentators directly involved in the private pay telephone industry have provided contradictory and factually supported evidence. ¹⁸

6. The Commission calls AT&T's assertion that consumers would object to interfacing with two operators on every 0+ call a "faulty premise." ¹⁹ Once again, Commission boldly represents the wishes of the populous without any reference to survey or studies or documentation. The Commission has reached an unsubstantiated conclusion that consumers object to using access codes, but would not object to interfacing with two operators.

7. The Commission states, "We believe that consumers would value the convenience of 0+ dialing and that many would pay a few cents more per call to enjoy it." ²⁰ Said belief is not factually nor scientifically supported. Furthermore, USLD believes that it is irresolute for the Commission to propose to require the investment of billions of dollars which will result in the elimination of an entire industry when the extent of the facts set forth in the FNPRM as to the impact of such an investment is quantified by the phrase "a few cents?" Is 100 a few cents? Is ten thousand a few? CompTel estimates the cost of BPP inquiry to be between \$0.60 and \$1.00 per call. ²¹ Prudent regulatory policy cannot be based upon unsubstantiated instincts, particularly when such policy proposes the commitment of billions of captive rate payer dollars.

¹⁸ see, e.g., "Comments of California Payphone Association in CC Docket No. 92-77", July 7, 1992, "Comments of the Northwest Pay Phone Association Opposing Billed Party Preference", July 7, 1992, "Initial Comments of the Independent Payphone Association of New York, Inc.", July 7, 199.

¹⁹ FNPRM at 34.

²⁰ Id. at 58.

²¹ see "Report on Applicability and Costs of Billed Party Preference," as prepared by Frost & Sullivan, September 1993.

IV. OTHER ERRORS AND OVERSIGHTS IN THE FNPRM

The Commission's evaluation of the implementation of BPP reaches the conclusion that such implementation would be in the best interest of the consumer, but the evaluation fails altogether to take into consideration certain factors that weigh heavily upon whether the public, in the long run, will actually realize a net benefit worthy of the tremendous cost of such implementation.

1. Public Investment into the Operator Service Industry

USLD believes that the Commission is well aware that the implementation of BPP will eliminate an entire industry segment, in which thousands of Americans are employed, tax revenue is generated, and private investments have been made over the course of several years. The Commission's proposed decision is a complete reversal in policy with three earlier FCC actions. The FCC fails to consider the expense associated with stranding the capital investment made in the OSP industry which was, in large part, a consequence of the Commission's previous endorsement of that same industry.

a. TRAC

In response to the formal complaint filed by The Telecommunications Research and Action Center ("TRAC") and Consumer Action, the FCC in 1989, having considered the evidence, ruled that complainants had not proven that rates charged by five OSPs were unjust nor unreasonable.²² Instead, the FCC issued orders to the five OSPs requiring them to more readily disclose information as to their identity and their services to potential users of their networks as the remedy to the complainant's allegations. The Commission's testimony implied that all OSPs should comply with these requirements as a method to ensure their satisfaction of consumer obligations under similar circumstances in Files E-88-104 through E-88-108. The Commission therefore affirmed that the

²² See Memorandum and Order, Telecommunications Research and Action Center and Consumer Action v. Central Corp., February 27, 1989, DA 89-237 (hereinafter referred to as the "TRAC Order").

competitive operator service industry could continue to thrive under these informal guidelines.

b. TOCSIA/CC 90-313

Congress enacted the Telephone Operator Consumer Services Improvement Act ("TOCSIA") in October, 1990. TOCSIA required to FCC to formally adopt regulations that would ensure that consumers are benefiting from competition in the OSP industry.²³

The Commission complied with this direction by adopting its Order in 90-313 on April 9, 1991. Specific instructions regarding branding, posting, blocking of access to other carriers, billing and complaint information availability, billing for unanswered calls or those originating from locations other than that from which the call was placed, tariff filing, and information reporting were promulgated.²⁴

Furthermore, under TOCSIA, the Commission was granted the specific authority to regulate OSP rates if it found these measures were not effective in controlling perceived OSP abuses. TOCSIA required the Commission to report its findings of the effectiveness of these regulations.²⁵

c. Report to Congress

In the Commission's Interim Report filed November 14, 1991, the Commission concluded, "Finally, the Commission continues to receive a large number of complaints concerning OSPs, but the complaints filed demonstrate no clear trend,"²⁶ which must call into question the Commission's reference to consumer complaints in the FNPRM.²⁷

In the Commission's Final Report, filed November 13, 1992, the Commission stated;

²³ Public Law No. 101-435, 104 Stat. 986 (1990).

²⁴ 47 C.F.R. §64.703-705.

²⁵ Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), 47 U.S.C. §226(h)(4)(A).

²⁶ Interim Report of the Federal Communications Commission pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, November 14, 1991, (hereinafter referred to as "FCC Interim Report") at page 19.

²⁷ FNPRM at 16.

"Based on the final findings set forth above, we determine that market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality and other relevant factors. As our discussion indicates, we consider the availability and growing use of dial-around options of critical importance in this determination because this phenomenon shows that consumers are, in the vast majority of cases, paying rates for operator services that they consider to be just and reasonable.

"For the foregoing reasons, we conclude that no further action is necessary at this time." ²⁸

For the third time, the Commission had endorsed the viability and therefore encouraged further private investment into the competitive operator services industry, given the condition that OSPs continue to comply with the regulations set forth in CC Docket 90-313. No information is set forth in the FNPRM which would indicate that the OSP industry has compromised this condition.

OSP's have been participating in this industry since 1986 or earlier. Since that time, billions of dollars of private capital has been invested into the networks and infrastructure of these companies. Digital switches, state-of-the-art operator service centers, and fiber optic transmission facilities have been laid out and constructed throughout the country with the backing of private investors, public equity offerings, banks and other lending institutions. These investments hang in the balance of a BPP decision. If the proposal is adopted, the operator services industry, after having been reaffirmed by the FCC during the original TRAC proceedings, the implementation of the provisions of TOCSIA in CC Docket 90-313, and the subsequent Reports to Congress, will completely vanish. Monopoly LECs will receive a windfall of revenue in their vacancy, for which they are guaranteed rate levels which produce a profit. Without revenue to support their investments, OSPs will be unable to meet their obligations to their respective investors and debtors. Companies will collapse, thousands of jobs will be

²⁸ FCC Final Report, at page 33.

eliminated, debts will be forfeited, and investor equity will disappear. Yet none of these facts are considered in the Commission's evaluation of the costs of implementing BPP. The FCC cannot perform a responsible evaluation of this proposal without quantifying and considering these costs to the general public, nor without considering their role in encouraging such investments through their previous rulings.

2. Impact of Creating a Monopoly Service in a Deregulated Market

At the time the implementation of BPP is being considered, motions have been filed by Regional Bell Operating Companies to obtain relief from the provisions of the 1983 Consent Decree.²⁹ The Consent Decree restricted Bell Operating Companies from participating in the interLATA long distance industry because, as the court found, when the monopoly provider of interLATA long distance access, which is vital to all long distance competitors, is permitted to compete for interLATA long distance business, the potential for discrimination and unfair trade practices are inescapable. The BOCs, in their recent petition, base their claim on the premise that alternative methods are now available to long distance providers for gaining access to their customers, such as that provided by CAPs and wireless communications providers.

At the same time, the Commission has adopted rules requiring the BOCs and other LECs to provide interconnection to competitive access services, recognizing that the more alternatives available in the long distance industry across all its sectors, the more efficient the industry operates.

However, with the FNPRM, in light of the definite trend in the industry to pare down or eliminate all vestiges of monopoly service, the Commission is attempting to create an entirely new monopoly industry for the processing of 0+ calls. The Commission has recommended that LECs construct this system, at a cost of over \$1

²⁹ See *United States of America v. Western Electric Company, Inc. and American Telephone and Telegraph Company*, Motion of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation and Southwestern Bell Corporation to Vacate the Decree, Civil Action No. 82-0192 (HHG) filed July 6, 1994.

billion, with captive rate payer funds. For all practical purposes, this decision will entrench the LECs in another monopoly service for years to come, and effectively squelch the potential for innovation or competitively driven efficiency in a market the FNPRM estimates to generate \$9 billion per year.

Congress is on the verge of adopting sweeping changes to telecommunications law fueled by the idea that monopoly services are inefficient and detrimental to consumers. BOCs are begging to be "relieved" of the burdens of monopoly service provision. Under these circumstances and the clear direction the course of this industry is headed, it is inconceivable that the Commission could endorse the implementation of a system which has a fundamental basis in a form of regulation whose future is likely more short-lived than the Commission's estimation of the time it will take to implement BPP.

In this same vein, the Commission fails to consider the impact of forcing all long distance companies' operator assisted calls through their potential competitor. Imagine the impact MCI could have on AT&T long distance operator service business if they were allowed to intercept all of AT&T's operator assisted calls. MCI could identify and target for their own marketeers the most frequent users of AT&T's 0+ services. MCI operators could attempt to inform AT&T callers that lower rates were available through their own network before transferring AT&T's customers to the AT&T network. MCI could demand of AT&T a charge for processing each one of these calls, and no safeguards would exist to ensure that the charge would be similarly imposed upon MCI callers. This potential exists under the Commission's BPP proposal, considering the BOCs pleadings before the court and the pending legislation that will allow the BOCs into the long distance operator service industry. Yet no consideration is made by the Commission in the FNPRM or throughout this proceeding for this potential rejuvenation of the anti-trust practices which lead to the break up of the Bell System in the first place. This is another indication that this proposal has been forged by the Commission in a vacuum, put forth as

an easy way for the Commission to eliminate responsibility for the burden of handling 10 end user complaints per working day.

ALTERNATIVES

USLD believes that the implementation of BPP as proposed imposes a greater burden upon the public than it is purported to resolve, it unfairly forces the elimination of hundreds of legitimate companies, and entrenches the LEC monopolies into another "sole-source" provider position which is inconsistent with the direction in which this industry is headed. The Commission, however, proposes that BPP is necessary because it will " ... facilitate access to the telephone network by eliminating the need for callers to use access codes" and " ... stimulate competition" which " ... should result in lower prices." ³⁰

Facilitating access is unnecessary since, according to the Commission's own estimate, callers continue to show greater acceptance of access code dialing, and are expected to use such access codes on half of all operator calls by 1997. The Commission presents no empirical data nor references any consumer complaints in substantiating their claim that consumers are crying out for the elimination of access code calling. Perhaps this perceived benefit is simply another means of justifying the Commission's ultimate objective, which appears to be to effectuate lower prices in the 0+ operator services industry.

USLD believes that the Commission possesses a significantly more cost effective alternative for achieving the objectives of lower rates within the operator service industry,

³⁰ **FNPRM** at 2. The Commission also claims that " ... the technology required for BPP would enrich the nation's telecommunications infrastructure, paving the way for further network innovation." Forcing an industry to invest billions of dollars into technology that rate payers will be required to pay for over the several years that follow BPP's implementation would effectively discourage any innovation in the operator service industry, as future regulatory consideration of services such as dial-around and Competitive Access Provider provision of similar call routing systems would have to be geared to protect the monopoly LECs investment. The Commission has already indicated an intention to impose more fees upon users of dial around services in the event BPP is implemented.

one that does not create a monopoly service and would not involve three years of development before its implementation.

Many states have considered the issue of end user rates while formulating their own operator service rules. They recognized that end user rates from aggregator telephones are not subject to the same competitive pressures that exist in one plus dialing, since end users do not control the selection of the presubscribed operator service provider from each privately owned pay telephone or hotel room telephone from which they periodically place calls. While much different cost structures exist between providers of operator services and direct dial service providers, it is also evident that end users calling from aggregator telephones in general have a higher threshold of what they deem to be acceptable charges. Some state regulatory agencies have undertaken measures to identify a threshold they believe is reasonable in the context of costs associated with operator service providers, and reasonable relative to the consumers' threshold. Thirty-four states currently impose some form of rate restriction upon the provision of intrastate operator services. These measures have involved rulemakings in which operator service providers and consumer advocacy groups have presented testimony regarding cost structures and consumer thresholds. These Commissions subsequently established rate structure guidelines with which an OSP must comply. Later, if a single OSP can justify a higher rate based upon standard regulatory rate review, it is permitted to present its case before the regulatory agency. Meanwhile, OSPs at or under the benchmark rate compete for aggregator business by improving their reporting systems, enhancing their networks, and developing and offering innovative services. Rules restricting call blocking and requiring posting of information about the 0+ service provider remain. In short, all the benefits that are currently available through the enactment of TOCSIA remain available to the consumers, while an additional safeguard is put in place for those callers who continue to prefer to dial "0+."

The Commission currently has this alternative available to it, as it has at least since the implementation of TOCSIA. The investment required is merely the effort necessary to conduct a rulemaking, not nearly the \$1 billion required for BPP. No entrenched monopoly service will be created, and all service providers will have the ability to remain viable, given the reasonableness of the ultimate rate structure.

USLD believes the feasibility of this alternative to be profound. The merits of this argument have been considered and resolved many times before, and the proliferation of aggregator telephones and the viability of operator service providers have not been decimated. Consumer complaints have been effectively abridged.

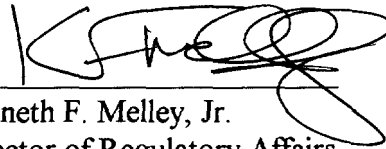
The Commission has pursued this alternative previously, albeit indirectly. ³¹ Evidence in these proceedings support USLD's belief that rate limitations are acceptable and readily complied with by the OSP industry. USLD believes that the Commission's continued concern over rates charged for operator services can be efficiently and effectively resolved through a more formal proceeding and the establishment of specific, reasonable rate limitations for all interstate operator assisted calls. At the very least, the Commission is obligated, in the opinion of USLD, to consider this alternative formally and conclusively prior to mandating the imposition of a monopoly service whose cost exceed \$1 billion.

³¹ In the Fall of 1991, the Commission issued notice to twelve operator service providers that it found certain rates within their tariffs appeared excessive. As a result, the Commission successfully encouraged all operator service providers to revise their tariffs to meet the threshold it informally established (\$6.58 for an eight minute, collect call of 1,500 miles.)

V. CONCLUSION

On balance, a BPP system, as contemplated in today's dynamic telecommunications environment, and in consideration of the tangible costs and benefits which are, in the estimation of USLD, less than adequately addressed in the FNPRM, would be contrary to the consumers' best interests. Furthermore, the Commission has other, less costly and far reaching alternatives available which can achieve the objectives BPP was conceptually designed to achieve. USLD believes that once the Commission carefully examines these factors, it will decline to adopt BPP.

Respectfully submitted,



Kenneth F. Melley, Jr.
Director of Regulatory Affairs
U.S. Long Distance, Inc.
9311 San Pedro, Suite 300
San Antonio, Texas 78216

August 1, 1994

NAME
FIRM
ADDRESS1
ADDRESS2
CITY, STATE ZIP

Roy L. Morris
Allnet Communication Services, Inc.
Suite 500
1990 M Street, N.W.
Washington, D.C. 20036

Albert H. Kramer
Keck, Mahin, & Cate
Penthouse Suite
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

John M. Goodman
Bell Atlantic
Telephone Companies
1710 H Street, N.W.
Washington, D.C. 20006

Kellie Cooke
Call America
Communications, Inc.
879 Morro Street
San Luis Obispo, California 93401

Jean L. Kiddoo
Swidler & Berlin, Chartered
Suite 300
3000 K Street, N.W.
Washington, D.C. 20007

John A. Ligon
Attorney at Law
Post Office Box 880
128 Mount Hebron Avenue
Upper Montclair, New Jersey 07043

James U. Troup
Arter & Hadden
Suite 400K
1801 K Street, N.W.
Washington, D.C. 20006-1301

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, D.C. 20036

Brad I. Pearson
Smith, Gill, Fisher & Butts
One Kansas City Place 35th Floor
1200 Main Street
Kansas City, Missouri 64105-2152

Steve Schude
Advanced Payphone Systems, Inc.
Suite 122
535 W. Iron Avenue
Mesa, Arizona 85210

Carolyn C. Hill
Alltel Service Corporation
Suite 1000
1710 Rhode Island Avenue, N.W.
Washington, D.C. 20036

John F. Dodd
Smith, Gill, Fisher & Butts
One Kansas City Place - 35th Floor
1200 Main Street
Kansas City, Missouri 64105-2152

William B. Barfield
BellSouth Telecommunications, Inc.
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30367-6000

Susan M. Shanaman
Central Atlantic
Payphone Association
21 North 4th Street
Harrisburg, Pennsylvania 17101

Genevieve Morelli
Competitive Telecommunications Assoc.
Suite 220
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

Andrew D. Lipman
Swidler & Berlin, Chartered
Suite 300
3000 K Street, N.W.
Washington, D.C. 20007

Glenn B. Manishin
Blumenfeld & Cohen
Suite 700
1615 M Street, N.W.
Washington, D.C. 20036

Steve P. McKibbin
Hospitality Communications, Inc.
800 Jesse Jewell Parkway
P.O. Box 1018
Gainesville, Georgia 30503

Judith St. Ledger-Roty
Reed Smith
Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Douglas F. Brent
Advanced Telecommunications
Corporation
and First Phone of New England, Inc.
10000 Shelbyville Road

Brian J. Kinsella
American Hotel and
Motel Association
1201 New York Avenue, N.W.
Washington, D.C. 20005-3931

Floyd S. Keene
Ameritech Operating Companies
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estates, Illinois 60196-1025

Richard L. Goldberg
Graham & James
One Maritime Plaza
Suite 300
San Francisco, California 94111

Carol F. Sulkes
Central Telephone
Company
8745 Higgins Road
Chicago, Illinois 60631

Richard E. Wiley
Wiley, Rein & Fielding
1776 K Street
Northwest
Washington, D.C. 20006

Karen M. Deyoung
Elcotel
Incorporated
6428 Parkland Drive
Sarasota, Florida 34243

Ann P. Morton
Swidler & Berlin, Chartered
Suite 300
3000 K Street, N.W.
Washington, D.C. 20007

Keith J. Roland
Roland, Fogel, Koblin
& Carr
One Columbia Place
Albany, New York 12207

Greg Casey
Oncor
Incorporated
6707 Democracy Blvd.
Bethesda, Maryland 20817

Catherine R. Sloan
LDDS Communications, Inc.
Suite 400
1825 Eye Street, N.W.
Washington, D.C. 20006

Mary J. Sisak
MCI Telecommunications
Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Barry Fitzgerald
North American
InTeleCom, Inc.
12000 Crownpoint Drive
San Antonio, Texas 78233

Lisa M. Zaina
OPASTCO
Suite 205
2000 K Street, N.W.
Washington, D.C. 20006

Randall B. Lowe
Jones, Day, Reavis & Pogue
1450 G Street
Northwest
Washington, D.C. 20005-2008

Mark A. Alberti
Pay - Tel
Corporation
45 West Tupper Street
Buffalo, New York 14202

Walter Steimel, Jr.
Fish & Richardson
601 Thirteenth Street
Northwest
Washington, D.C. 20005

Josephine S. Trubek
RCI Long Distance, Inc.
Rochester TelCenter
180 South Clinton Avenue
Rochester, New York 14646-0700

Rochelle D. Jones
Southern New England Tel. Co.
4th Floor
227 Church Street
New Haven, Connecticut 06510

Craig T. Smith
Sprint Corporation
Post Office
Box 11315
Kansas City, Missouri 64112

Steven J. Hogan
LinkUSA
Suite 400
230 2nd Street, S.E.
Cedar Rapids, Iowa 52401

Douglas E. Neel
MessagePhone, Inc.
Suite 1575
5910 North Central Expressway
Dallas, Texas 75206

Douglas N. Owens
Attorney at Law
4705 16th Avenue
Northeast
Seattle, Washington 98105

Connie Wightman
Technologies Management
Incorporated
P.O. Drawer 200
Winter Park, Florida 32790-0200

James P. Tuthill
Pacific Bell / Nevada Bell
Room 1523
140 New Montgomery Street
San Francisco, California 94105

Scott Stutman
Phone Home
Enterprises
P.O. Box 599
Westwood, New Jersey 07675

Mark W. Kelly
Polar Communications
Corporation
300 Corporate Center Drive
Manalapan, New Jersey 07726

John W. Hunter
McNair Law Firm, P.A.
1155 Fifteenth Street
Northwest
Washington, D.C. 20005

Durward D. Dupre
Southwestern Bell Telephone Co.
Room 2114
1010 Pine Street
St. Louis, Missouri 63101

Erin E. Ostler
Strategic Alliances, Inc.
Suite 106
2353 Rice Street
Roseville, Minnesota 55113

James D. Heflinger
LiTel Communications Corp.
d.b.a. LCI International
4650 Lakehurst Court
Dublin, Ohio 43017

Andy Z. Schonhaut
Metropolitan Fiber Systems, Inc.
Government Affairs Office
3000 K Street, N.W.
Washington, D.C. 20007-3851

Amy S. Gross
NYCOM Information Services, Inc.
Suite 200
2701 Summer Street
Stamford, Connecticut 06905

Kirk Smith
Operator Service
Company
1624 Tenth Street
Lubbock, Texas 79401-2607

James L. Wurtz
Pacific Bell / Nevada Bell
1275 Pennsylvania Avenue
Northwest
Washington, D.C. 20004

Mitchell F. Bretcher
Dow, Lohnes, & Albertson
1255 Twenty-third Street
Northwest
Washington, D.C. 20037

Rick L. Anthony
Quest Communications
Corporation - Suite 205
6600 College Boulevard
Overland Park, Kansas 66211

Ken Scott
San Diego Payphone
Owners Association
P.O. Box 1265
La Mesa, California 91944

Leon M. Kestenbaum
Sprint Corporation
11th Floor
1850 M Street
Washington, D.C. 20036

Margot Smiley Humphrey
Koteen & Naftalin
1150 Connecticut Avenue
Northwest
Washington, D.C. 20036